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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,246

11/14/2003

Daniel Deutsch

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2474

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11/30/2004

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EXAMINER

TSO, LAURA K

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,246

Applicant(s)

DEUTSCH, DANIEL

Examiner

laura tso

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-34 is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/14/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the **description: 33**. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. **The objection to the drawings will not be held in abeyance.**

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "36" and "38" have both been used to designate the cap. [note page 7, lines 1 and 4]. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. **The objection to the drawings will not be held in abeyance.** Note page 7, line 38: applicant should insert "38" after "spring" and delete "38" after "cap".

Specification

The disclosure should be carefully reviewed to ensure that any and all grammatical, idiomatic, and spelling or other minor errors are corrected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Huang (5,826,534).

Huang discloses a whistle comprising a housing [10] including an inner cavity [101: figure 2], mouthpiece [20] and a sound hole [102], a battery power source [403], an electric circuit [inherent], a light source [421], and a switch [501] and a split ring connector [note figures 1 and 2] for connecting the whistle to a predetermined article. The predetermined article is a key chain [30]. The switch is manually operable [column

3, line 15]. The light source, power source and switch are positioned within a compartment [40: figure 3] separate from the inner cavity [101].

Claims 1, 3, 5, 8, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gertler (4,314,316).

Gertler discloses a whistle comprising a housing [10] including an inner cavity [19], mouthpiece [11] and a sound hole [17], a battery power source [20: column 3, line 13], an electric circuit [column 3, line 54], a light source [36], and a switch [37,38,44] and a connector [12] for connecting the whistle to a lanyard [column 2, line 14]. The switch is motion sensitive so as to automatically close in response to movement of the whistle [column 3, lines 27-28]. The housing comprises a translucent material [column 2, lines 26-27]. The light source, power source and switch are positioned within a compartment [note 18, 118] separate from the inner cavity [19,119].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang or Gertler et al. in view of Hobson (6,329,927).

Neither Huang nor Gertler disclose the light source is an LED. However, LEDs are well known to be inexpensive and long lasting. Hobson teaches an illuminated whistle may employ LED lamps [12]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the devices of Huang and Gertler with an LED lamp, as taught by Hobson, to create a device having a long lasting and inexpensive lamp.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang or Gertler et al.

Neither Huang nor Gertler disclose the housing is substantially waterproof. However, it is well known to make whistles and flashlights waterproof so that they may be used in inclement weather. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the devices of Huang and Gertler with a waterproof housing to create a device which may be used in inclement weather.

Allowable Subject Matter

Claims 12-34 are allowed.


The following is a statement of reasons for the indication of allowable subject matter:

Prior art fails to show or suggest a lighted whistle or method of lighting a whistle comprising a housing including an inner cavity, a mouthpiece and a sound hole, the housing being partially translucent and containing a fluorescent material responsive to UV or near UV light, a power source connected in an electric circuit to a light source which emits UV or near UV light, a switch and a connector for connecting the whistle to a predetermined article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to laura tso whose telephone number is 571-272-2385. The examiner can normally be reached on M-W and F 12:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, sandra o'shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


laura tso
Primary Examiner
Art Unit 2875